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 FM AMCONSUL HAMBURG
 TO SECSTATE WASHDC IMMEDIATE 1672
 INFO AMEMBASSY BERLIN
 FRG COLLECTIVE 0665
 EU INTEREST
 DEPT OF JUSTICE IMMEDIATE 0007

UNCLAS HAMBURG 0074

DEPT FOR EUR/AGS, EUR/PPD, L/LEI, AND S/CT
 JUSTICE FOR BARBARA BERMAN AND PATRICIA REEDY

SENSITIVE BUT UNCLASSIFIED

E.O. 12958: N/A
 TAGS: PTER, KJUS, PREL, GM
 SUBJECT: MOTASSADEQ SENTENCED TO SEVEN YEARS
 IN PRISON

REFERENCE: A) HAMBURG 008 B) 04 HAMBURG 413
 C) BERLIN 808 D) BERLIN 1952 E) HAMBURG 44 AND PREVIOUS

1. (U) Message is sensitive but unclassified. Please protect accordingly. Do not disseminate over the Internet.
2. (SBU) SUMMARY: The Hamburg Superior Court (Oberlandesgericht) on August 19, 2005 sentenced Mounir el-Motassadeq to a seven-year term upon being found guilty of the charge of membership in a terrorist organization. The Court, however, found insufficient evidence to convict him on an accompanying charge of 3,000 counts of accessory to murder related to the 9/11 attacks. The judge's panel acknowledged the assistance provided by testimony from 9/11 Commission staffer Diettrich Snell and FBI agent Matthew Walsh, but repeatedly said that there had been an unwillingness/inability on the part of the USG to provide classified materials, something which the judge's panel characterized as an impediment in the proceedings. Motassadeq's attorneys have said that they will appeal the decision. (Motassadeq was previously (February 2003) convicted on both charges and received a 15-year sentence -- he was the first person convicted on charges related to the 9/11

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attacks). END SUMMARY.

3. (SBU) In his four-hour reading of the court's verdict Chief Judge Schudt portrayed Motassadeq as one of seven core members in the Hamburg cell around Mohammed Atta. He noted the increasing radicalism exhibited by Motassadeq and other cell members beginning in 1998-99, especially as shown by a videotape of jihadist songs being sung at the wedding of cell member Bahaji. In addition, he said the subsequent travel of Motassadeq and four other core members to Al Qaeda training camps in Afghanistan was evidence of the cells intent to participate actively in the "jihad against the United States and Israel". Schudt described as "ludicrous" Motassadeq's claim that he had attended the Al Qaeda camp only to learn "swimming, shooting, and riding" as required of Muslim men in the Koran. Schudt also painstakingly detailed the involvement of Motassadeq in transferring funds to/from cell members and creating fictitious apartment leases and university enrolment documents to conceal cell members' travel to Afghanistan and subsequently to the United States. The judge concluded that the evidence clearly showed Motassadeq was a member of the Atta-led cell and was prepared to engage in terrorist actions.

4. (SBU) Schudt also noted the Court's belief that the 9/11 attacks had not been planned in Hamburg, but rather that the Atta cell had been recruited for the attacks by senior Al Qaeda leadership (possibly Bin Laden, Schudt said) during their stay at the Afghan camps. In addition, he stated the Court's opinion that Motassadeq and Abdelghani Mzoudi, who had also been tried for 9/11 related charges (ref B), had been "tested" during their stay in Afghanistan and found "too weak" to participate directly in the 9/11 attacks; Motassadeq and Mzoudi were subsequently "shielded" from direct knowledge of the plot by Ramzi Binalshibh and provided only logistics/administrative support. The Court therefore did not convict Motassadeq on the 3,000 counts of accessory to murder (Comment: The court thus indicated that it believed Mzoudi to be guilty of the same charge as Motassadeq; Mzoudi was acquitted by another panel in June 2004 (ref D) and has subsequently returned to Morocco (ref E). End Comment.)

Access to USG Classified Material

5. (SBU) The Court repeatedly referred to the hindrance that it felt resulted from the lack of access to witnesses (Ramzi Binalshibh and Khaled Sheikh Mohammed, presumed by the Court to be in USG custody), their unedited interrogation reports,

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and other classified materials. Schudt also regretted that both FBI agent Walsh and 9/11 Commission Staffer Snell had been limited in their scope of response while testifying at the trial (Note: the judges said testimony of Snell was helpful. End Note.)

6. (SBU) The Court also noted the difficulty it had in deciding on whether to admit the unclassified interrogation report summaries from Binalshibh and Sheikh Mohammed provided by the U.S. Department of Justice. The Court said they believed the interrogations may have resulted from torture (which would make them inadmissible), but decided to consider them anyway to insure that potentially exculpatory information could be considered. The Court ultimately found that the interrogation summaries did not sway the decision in either direction.

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----- Background -----

7. (SBU) Motassadeq had been convicted and received a 15-year sentence in February 2003 on 3,000 counts of accessory to murder and membership in a terrorist organization, charges stemming from the 9/11 attacks. Following the acquittal by Hamburg's Superior Court of fellow 9/11 suspect Abdelghani Mzoudi in February 2004, the Federal Supreme Court (Bundesgerichtshof) on March 4, 2004 overturned Motassadeq's conviction and ordered a retrial. Both the Mzoudi and Motassadeq rulings centered on the perceived lack of full access to potentially exculpatory testimony from U.S. interrogations of detained terrorist Khaled Sheikh Mohammed and Ramzi Binalshibh. (Note: The Supreme Court's 21-page Motassadeq ruling argued explicitly that the Hamburg Superior Court had failed to adequately consider the fact that authorities had not made available the Sheikh Mohammed and Binalshibh interrogation transcripts. End Note).

----- Comment -----

8. (SBU) The exhaustive nature of the retrial (112 witnesses, 3,500 pieces of evidence) reflects the court's determination to address the Federal Supreme Court's reasoning for ordering the retrial; that not all avenues of questioning were pursued and that insufficient attention was paid to potentially exculpatory evidence. Initial reactions from US co-plaintiffs

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(9/11 survivor groups) has been positive.

9. (U) This cable was cleared with Embassy Berlin.

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